

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
vs.) No. 11-03044-01-CR-S-RED
)
)
MICHAEL KELLEY,)
)
)
Defendant.)

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Defendant has filed a Motion to Dismiss based upon an alleged violation of the Speedy Trial Act. A review of the files and records in this case establish that the defendant made his first appearance in this district on August 18, 2011, and on August 19, 2011, a Motion to Detain was filed by the United States. That motion was granted on August 22, 2011. A superseding indictment was returned on September 28, 2011, and the defendant was arraigned on that indictment on October 26, 2011. On November 17, 2011, the defendant filed the first of a series of pro se motions. On December 19, 2011, defendant filed a Motion for Continuance and a waiver of his right to a speedy trial. A second Motion to Continue was filed by the defendant on March 19, 2012, and the matter is currently set on the June 4, 2012, Joint Criminal Trial Docket.

In determining the Motions to Continue, the Court specifically found that the ends of justice served outweighed the best interests of the public and the defendant in a speedy trial. The time period from December 19, 2011, until the June setting is therefore excluded under the Speedy Trial Act. The defendant's argument is that the time between the date the superseding indictment was returned his arraignment on that indictment should not be excluded. While the

Court does not believe this argument has merit, even if that time were not excluded, the defendant, as a detained person, would still be within the 90 days following the beginning of his continuous detention. There is not a violation of the Speedy Trial Act under 18 U.S.C. § 3164.

It is therefore

RECOMMENDED that defendant's Motion to Dismiss be denied.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate Judge

Date: May 14, 2012